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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

NO. 219.

ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO,
PLAINTIFF IN ERROR,

vs.

WRIGHT AND LAWTHER OIL AND LEAD MANUFACTURING COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JULY 9, 1891.

(14730.)

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, in the northern division thereof, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for the northern district of Illinois, on Tuesday, the fourteenth day of August, in the July term of said court, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fifteenth year.

WM. H. BRADLEY, *Clerk.*

WRIGHT AND LAWTHER OIL AND LEAD MANUFACTURING COMPANY *vs.* ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS for the port and district of Chicago.	Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the thirtieth day of November, 1889, came the plaintiff, by its attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, its præcipe for a writ of summons, and also at the same time filed its bond for costs insaid entitled cause; which said
2 præcipe and bond are respectively in the words and figures following, to wit:

Præcipe.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

United States circuit court for the northern district of Illinois, December term, A. D. 1889.

WRIGHT AND LAWTHER OIL AND LEAD Manufacturing Company, a corporation, &c., *vs.* ANTHONY F. SEEBERGER, COLLECTOR FOR THE port and district of Chicago.	Assumpsit. Damages, $1,000.

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case on promises, to the damage of said plaintiff in the sum of one thousand dollars, and direct the same to the marshal of said district to execute and make it returnable to the December term of said court, A. D. 1889.

SHUMAN & DEFREES,
Plaintiffs' Attorneys.

To WM. H. BRADLEY, Esq.,
Clerk, Chicago, Nov. 30th, 1889.

(Endorsed:) Filed Nov. 30, 1889. Wm. H. Bradley, clerk.

3 *Bond for costs.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, December term, A. D. 1889.

WRIGHT & LAWTHER OIL AND LEAD MFG. CO.
vs.
ANTHONY F. SEEBERGER, COLLECTOR, &C. } In law.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by it, we hereby agree and stipulate that execution may issue against our property for any costs taxed against plaintiff. Dated this 30th day of November, A. D. 1889.

SHUMAN & DEFREES.

(Endorsed:) Filed Nov. 30, A. D. 1889. Wm. H. Bradley, clerk.

4 On the same day, to wit, on the thirtieth day of November, 1889, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

Circuit court of the United States of America, northern district of Illinois, ss.

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Anthony F. Seeberger, collector of customs for the port and district of Chicago, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December next, to answer unto Wright and Lawther Oil and Lead Manufacturing Company, a corporation, of a plea of trespass on the case upon promises, to its damage as is alleged of one thousand dollars, and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this
5 30th day of November, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the 114th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Marshal's return.

UNITED STATES OF AMERICA,
Northern Dist. of Illinois, ss:

I have served this writ by reading the same to and in the presence and hearing of Anthony F. Seeberger, collector, &c., this 30th day of November, A. D. 1889.

F. H. MARSH, *Marshal.*
W. H. MITCHELL, *Dep.*

(Endorsed:) Filed Nov. 30, A. D. 1889. Wm. H. Bradley, clerk.

Afterward, to wit, on the sixth day of December, 1889, came the plaintiff, by its attorneys, and filed in said clerk's office its declaration in said entitled cause; which said declaration is in the words and figures following, to wit:

6 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court for the northern district of Illinois. To the December term, 1889.

Wright and Lawther Oil and Lead Manufacturing Company, a corporation organiezd and doing business under the laws the State of Illinois, plaintiff in this suit (which is a suit arising under the revenue laws of the United States, and is brought to recover duties claimed by the plaintiff to have been illegally exacted of it, and by it paid under protest), by Shuman & Defrees, its attorneys, complains of Anthony F. Seeberger, collector of customs for the port and district of Chicago, defendant herein, who was sommoned, etc., of a plea of trespass on the case on promises.

For that whereas the said plaintiff heretofore, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and eighty-nine, at, to wit, the northern district of Illinois, made payment to the said defendant, collector as aforesaid, of a certain large sum of money, to wit, the sum of one thousand dollars and cents, lawful money of the United States, as duties under protest, and in order to obtain possession of certain linseed in bags, merchandise imported into the United States for
7 it, the said plaintiff, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiff avers that said sum of money above specified so paid to the said defendant as aforesaid, as duties aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiff. And the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid by the proper officers of the customs, it, the said plaintiff, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein distinctly and specifically the ground of its, the said plaintiff's, objection thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid the plaintiff appealed to the Secretary of the Treasury of the United States.

And the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeal and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeal. By means whereof, and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the sum of one thousand dollars and cents, lawful money as aforesaid, so illegally demanded of, and under protest paid by, the said plaintiff as aforesaid, and being so
8 liable the said defendant afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place last aforesaid, became and was indebted to the said plaintiff in the further sum of one thousand dollars, like lawful money, as aforesaid, for money by the said defendant before that time had and received, to and for the use of the said plaintiff, and being so indebted, the said defendant afterwards, to wit, on the day and year and at the district last aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested, etc,) has not paid the said several sums of money above specified, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff the said defendant hath hitherto wholly neglected and refused, and still does so neglect and refuse, to the damage of the said plaintiff in the sum of one thousand dollars, and therefore the said plaintiff brings its suit, &c.

SHUMAN & DEFREES,
Plaintiff's Attorneys.

(Endorsed:) Filed Dec. 6, 1889. Wm. H. Bradley, clerk.

9 Afterward, to wit: On the sixteenth day of December, 1889, came the defendant, by his attorney, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

United States circuit court, northern district of Illinois, N. div.

WRIGHT AND LAWTHER OIL AND LEAD CO., a corporation, &c., vs. A. F. SEEBERGER, COLLECTOR, &C.	Assumpsit. No. 1487.

The appearance of Anthony F. Seeberger, collector, &c., defendant in this cause, is hereby entered by his attorney.

WILLIAM G. EWING,
United States Attorney.

(Endorsed:) Filed Dec. 16, 1889. Wm. H. Bradley, clerk.

10 Afterward, to wit: On the fourteenth day of March, 1890, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois, northern division, of the March adjourned term, 1890.

ANTHONY F. SEEBERGER, COLLECTOR, &C., *ats.* WRIGHT AND LAWTHER OIL AND LEAD MFG. CO., a corporation.	Assumpsit. Gen. No. 21487.

And the said Anthony F. Seeberger, collector, &c., defendant, by William G. Ewing (United States attorney for said district), his attorney, comes and defends, etc., when, etc., and says that he did not undertake or promise in manner and form as the said plaintiff has above thereof complained against him; and of this the said defendant puts himself upon the country, etc.

WILLIAM G. EWING,
United States Attorney, for Defendant.

(Endorsed:) Filed Mch. 14, 1890. Wm. H. Bradley, clerk.

11 Afterward, to wit: On the twenty-seventh day of March, 1890, there was filed in said clerk's office a stipulation in said entitled cause, which said stipulation is in the words and figures following to wit:

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois.

WRIGHT & LAWTHER OIL AND LEAD MFG. CO. *vs.* ANTHONY F. SEEBERGER, COLLECTOR, &C.	Gen. No. 21487.

It is hereby stipulated that the above-entitled cause may be submitted to the court for trial without a jury, a jury being hereby expressly waived.

SHUMAN & DEFREES,
Attorneys for Plaintiffs.
W. G. EWING,
U. S. Attorney, Attorney for Defendant.

(Endorsed:) Filed this 27th day of March, A. D. 1890. Wm. H. Bradley, clerk.

12 On the same day to wit: On the twenty-seventh day of March, in the adjourned March term of court 1890, in the record of the proceedings thereof, in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry to wit:

Order:

THE WRIGHT AND LAWTHER OIL AND LEAD Manufacturing Company *vs.* ANTHONY F. SEEBERGER, COLLECTOR, &C. } Assumpsit.

Now come the parties by their attorneys, and upon issue joined herein by agreement of the parties as per stipulation filed they waived the intervention of a jury and for trial put themselves upon the court, and after hearing the evidence the court takes the same under advisement.

Afterward to wit: On the thirty-first day of July, 1890, there was filed in said clerk's office the opinion of Judge Blodgett in said entitled cause, which said opinion is in the words and figures following to wit:

13 WRIGHT & LAWTHER COMPANY *vs.* ANTHONY F. SEEBERGER, COLLECTOR. } No. 21487.

JULY 31, 1890.

BLODGETT, J.:

Plaintiff imported a quantity of flaxseed from Liverpool which had been brought from Calcutta. The invoices showed the gross weight and a tare of five pounds per bag, and a deduction of "4 per cent for impurities."

The collector in assessing the duties deducted the tare, which was the weight of the bags, but refused to allow anything for impurities, assessing a duty of 20 cents per bushel of 56 pounds upon the gross weight less the tare. Plaintiff paid the duties so assessed under protest, appealed to the Secretary of the Treasury, by whom the action of the collector was
14 affirmed, and brought this suit in apt time to recover the excess of duties paid by reason of the refusal to make any deduction for impurities.

The proof in this case shows without dispute that the seed contained dust composed of clay, sand, and gravel to an average of 4 per cent, and the question is whether this deduction should have been allowed the plaintiff; or, in other words, should the plaintiff have been compelled to pay duty on any thing but the clear flaxseed?

It is contended on the part of the defendant that, under the last clause of Sec. 2898, which prohibits the allowance in any case for "draught," the collector has no authority to make the allowance claimed for impurities.

By the 35th section of the act of August 4, 1790, it was provided "that the following allowance shall be made for the draft and tare of the article subject to duty by weight: that is to say, for draught on any quantity of one hundredweight, or one hundred and twelve pounds

and under one pound; on any quantity above one, and not exceeding two hundredweight, two pounds; on any quantity above two, and not exceeding three hundredweight, three pounds; on any quantity above three, and not exceeding ten hundredweight, four pounds; on any quantity above ten, and not exceeding eighteen hundredweight, seven pounds; on any quantity above eighteen hundredweight, nine pounds."

The same provision is found in *sec*tion 58 of the act of March 2, 1799, and this continued to be the law until, by the 16th section of
15 the act of July 14, 1862, the provision which I have quoted from section 2898 was enacted and and still remained in force.

The contention on the part of the collector is that section 2898, which prohibits the allowance of "draft" or "draught," prohibits him from making any deduction from an article subject to specific duty by reason of the impurities contained in it.

I am, however, of opinion that the words "draft" and "draught" used in these acts of Congress do not apply to or mean the impurities contained in an imported article, but mean the arbitrary allowance of certain deductions for loss of weight in handling, or shrinkage, or variations in scales, or devices for weighing, and have no reference to such deductions as should be made to ascertain the exact, or as nearly as possible the exact, amount of clean seed imported.

By the tariff act of March 3, 1883, claus' 466, Heyl, "linseed or flaxseed" is made dutiable at twenty cents per bushel of fifty-six pounds," and I can give no other construction to this provision of the law than that it means fifty-six pounds of clean seed as nearly as the same can be ascertained and determined. I am not prepared to say whether any deduction could be allowed where the impurity consists of flaxseed or linseed made foul by mixture with other oleaginous seeds, such as rape and mustard seeds, but I am quite clear in my conclusion that the importer has the right to have a deduction made for dirt and impurities of that character which are contained in the seed, and *and* that he should only be
16 required to pay duty upon the weight of the seed after ascertaining and deducting with approximate accuracy the quantity of such impurities.

For these reasons I find the issues for the plaintiff, and assess the damages at $8 .

(Endorsed:) Filed July 31, 1890. Wm. H. Bradley, clerk.

17 Afterward, to wit, on the fourteenth day of August, in the July term of said court, 1890, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

WRIGHT AND LAWTHER OIL AND LEAD MANUFACTURING COMPANY, *vs.* ANTHONY F. SEEBERGER, COLLECTOR, &c.	Assumpsit.

Now come the parties, by their attorneys, and the court having considered and being now fully advised upon the matters herein, finds the issue for the plaintiff and assesses its damages at six hundred and seventy

dollars and twenty-nine cents, with interest thereon from time of payment. The court also finds that there was probable cause for the acts done herein by said defendant, and orders that execution do not issue herein.

It is thereupon considered and adjudged by the court that said plaintiff do have and recover of said defendant the said sum of six hundred and seventy dollars and twenty-nine cents, its damages, together with its costs in this behalf expended, amounting to twenty-one dollars and sixty-six cents.

18 NORTHERN DISTRICT OF ILLINOIS,
Northern Division, ss:

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein Wright and Lawther Oil and Lead Manufacturing Company is plaintiff, and Anthony F. Seeberger, collector of customs for the port and district of Chicago, is defendant, as the same appears from the records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this twenty-third day of June, 1891.

[SEAL.] WM. H. BRADLEY, *Clerk.*

19 UNITED STATES OF AMERICA,
Northern district of Illinois, northern division, ss:

The United States of America. To the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court, between Wright and Lawther Oil and Lead Manufacturing Company, plaintiff, and Anthony F. Seeberger, collector of customs for the port and district of Chicago, defendant, in an action of assumpsit a manifest error hath happened, to the great damage of the said Anthony F. Seeberger, collector of customs for the port and district of Chicago, *is* defendant, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of July, A. D. 1891, in the Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 16th day of June, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the 115th year.

[SEAL.] WM. H. BRADLEY,
Clerk U. S. Circuit Court Nor. Dist. Ill.

(Indorsed:) Supreme Court of the United States. A. F. Seeberger, collector of customs for the port and district of Chicago, plaintiff in error, vs. Wright and Lawther Oil and Lead Manufacturing Company, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office, U. S. northern district of Illinois.

20 UNITED STATES OF AMERICA,
Northern district of Illinois, northern division, ss:

To Wright and Lawther Oil and Lead Manufacturing Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., on the second Monday of July, A. D. 1891, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein you are plaintiffs, and Anthony F. Seeberger, collector of customs for the port and district of Chicago, is defendant, to show cause, if any there be, why the error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this 16th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

H. W. BLODGETT, *Judge.*

Service accepted.

PERCY L. SHUMAN, *Att'y.*

(Indorsed:) Supreme Court of the United States. Anthony F. Seeberger, collector of customs, &c., plaintiff in error, vs. Wright and Lawther Oil and Lead Mfg. Co., defendant in error. Citation to July 13, 1891.

(Indorsement on cover:) Supreme Court U. S., clerk's office. Received Jul. 8, 1891. No. 219. 14730. Anthony F. Seeberger, collector of customs for the port and district of Chicago, plaintiff in error, vs. Wright and Lawther Oil and Lead Manufacturing Company. N. Illinois, C. C. U. S. Filed July 9th, 1891.

1 IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 219.

A. F. SEEBERGER, COLLECTOR, ETC., PLAINTIFF IN ERROR,

v.

WRIGHT & LAWTHER OIL AND LEAD MANUFACTURING COMPANY.

STIPULATION.

It is agreed that the annexed certified transcript of special finding of facts, filed by order of the court on December 12, 1894, as of August 14, 1890, shall be filed in the Supreme Court as a part of the record, with the same effect as if brought up upon suggestion of diminution of the record by writ of certiorari.

LAWRENCE MAXWELL, Jr.,
Solicitor-General.

PERCY L. SHUMAN,
Counsel for Defendant in Error.

2 In the circuit court of the United States of America for the northern district of Illinois.

Northern division. Of the July term, A. D. 1890.

THE WRIGHT AND LAWTHER OIL AND Lead Manufacturing Company *v.* ANTHONY F. SEEBERGER, COLLECTOR of customs for the port and district of Chicago.	Gen. No. 21487. Assumpsit.

SPECIAL FINDING OF FACTS.

Be it remembered, that this cause came on to be tried at this term by the court, without the intervention of a jury, the attorneys of record of the respective parties hereto having filed with the clerk a stipulation in writing waiving a jury.

And upon such trial of this cause—which is a suit to recover certain moneys exacted from the plaintiff as duties upon merchandise imported by it, and claimed by the defendant to be the lawful duties upon that merchandise—the court, having heard the testimony offered by the parties and the arguments of their counsel, found as follows:

Plaintiff imported a quantity of flaxseed from Liverpool, which had been brought from Calcutta. The invoices showed the gross weight and a tare of five pounds per bag, and a deduction of "4 per cent for impurities."

The collector in assessing the duties deducted the tare, which was the weight of the bags, but refused to allow anything for impurities, assessing a duty of 20 cents per bushel of 56 pounds upon the gross weight less the tare. Plaintiff paid the duties so assessed under protest, appealed to the Secretary of the Treasury, by whom the action of the collector was affirmed, and brought this suit in apt time to recover the excess of duties paid by reason of the refusal to make any deduction for impurities.

The proof in this case shows without dispute that the seed contained dust composed of clay, sand, and gravel to an average of 4 per cent.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed Dec. 12, 1894, as of August 14, 1890.

S. W. BURNHAM, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS,
Northern Division, ss:

I, S. W. Burnham, clerk of the circuit court of the United States, for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the special finding of facts on the 12th day of December, A. D., 1894, directed by the said court (the Hon. Peter S. Grosscup, presiding) to be filed in said court as of the fourteenth day of August, A. D. 1890, in the cause wherein The Wright and Lawther Oil and Lead Manufacturing Co. is the plaintiff, and Anthony F. Seeberger, collector of customs, etc., is the defendant, as the same appears from the original thereof, now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 12th day of December, A. D. 1894.

[SEAL.] S. W. BURNHAM, *Clerk.*

(Endorsed:) Case No. 14730. Supreme Court, U. S. October term, 1894. Term No. 219. A. F. Seeberger, collector, etc., pltf. in error, vs. Wright & Lawther Oil and Lead Manfg. Co. Stipulation and addition to record. Office Supreme Court, U. S. Filed Jan. 9, 1895. James H. McKenney, clerk.

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Office Supreme Court, U. S.
FILED.
JAN 30 1895
JAMES H. McKENNEY,
CLERK.

CASE No. 14730.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

ANTHONY F. SEEBERGER, COLLECTOR of customs for the port and district of Chicago, plaintiff in error.
v.
WRIGHT & LAWTHER OIL AND LEAD Manufacturing Company.
} No. 219.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

ANTHONY F. SEEBERGER, COLLECTOR of customs for the port and district of Chicago, plaintiff in error.
v.
WRIGHT & LAWTHER OIL AND LEAD Manufacturing Company.
No. 219.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR PLAINTIFF IN ERROR.

This was an action to recover duties paid under protest. The articles in question were imported in the year 1889 and were subject to a specific duty regulated by weight. They consisted of flaxseed, which contained four per cent of impurities. The only question in the case is whether the importers were entitled to an allowance of this per cent from the gross weight of the goods in estimating the duty.

STATEMENT OF FACTS.

The case was tried before Judge Blodgett, without a jury, under stipulation of the parties. The facts are as follows:

> Plaintiff imported a quantity of flaxseed from Liverpool, which had been brought from Calcutta. The invoices showed the gross weight and a tare of five pounds per bag, and a deduction of "4 per cent for impurities." The collector, in assessing the duties deducted the tare, which was the weight of the bags, but refused to allow anything for impurities. * * * The proof in this case shows without dispute that the seed contained dust composed of clay, sand, and gravel to an average of 4 per cent.

Flaxseed was then dutiable at the rate of "twenty cents per bushel of fifty-six pounds." (Tariff of 1883, par. 466.)

ARGUMENT.

I.

It will be noticed that there are no special findings in the original record, but that they have been annexed by stipulation. By an informality the special findings were incorporated in the opinion of the court, and not also separately filed. This, of course, is insufficient. (*Saltonstall* v. *Birtwell*, 150 U. S., 417.) They were afterwards filed by order of the court made December 12, 1894, *nunc pro tunc* as of August 14, 1890. The parties have accordingly stipulated that they be "filed in the Supreme Court as a part of the record, with the same effect as if brought up upon suggestion of diminution of the record by writ of *certiorari*." This being merely the correction of a formal

defect, it seems to be proper under the rulings of this court. (*Wight, Petitioner*, 134 U. S., 136; *Hickman* v. *Fort Scott*, 141 U. S., 415, 418; *Michigan Insurance Bank* v. *Eldred*, 143 U. S., 293, 299.)

II.

This brings us to the main question, whether the clay sand, and gravel in these bags of flaxseed constituted "draught" within the meaning of § 2898 of the Revised Statutes.

> In estimating the allowance for tare on all chests, etc., * * * where the original invoice is produced at the time of making entry thereof, and the tare shall be specified therein, the collector, if he sees fit, or the collector and naval officer, if any, if they see fit, may, with the consent of the consignees, estimate the tare according to such invoice; but in all other cases the real tare shall be allowed; * * * *but in no case shall there be any allowance for draught.*

In England there is a peculiar use of the word "draught" in connection with commercial transactions, including those at the custom-house. It there means an arbitrary deduction from gross weight, made by custom to assure the buyer or importer, as the case may be, that there is no discrimination against him from difference in scales. It is somewhat analogous to the thirteenth of the "baker's dozen." The custom, however, was not a familiar one to lawyers. It does not appear in Jacobs' or Tomlins' law dictionary or in many of the later ones.

There has been apparently no such custom prevalent in the United States. There is, however, a word "draff,"

sometimes spelled "draft" (which is also an alternative spelling for the English word above referred to), whose definition includes all worthless and refuse matter and would include the dirt in this flaxseed.

The courts have differed in opinion as to whether § 2898 and its progenitors refer to the English "draught" or to this "draff."

Dictionary definitions.—Johnson's Dictionary, published in 1755, did not contain the technical definition of "draught." It defined "draff" as follows:

> Anything thrown away; sweepings; refuse; lees; dregs.

Dr. Johnson's first quotation is from Shakespeare, as follows:

> You would think I had a hundred and fifty tattered prodigals lately come from swine keeping, from eating *draff* and husks.

Among modern dictionary definitions we may cite from Webster's 1829 edition as follows:

> *Draff.* Refuse; lees; dregs; the waste given to swine or grains to cows; waste matter.
>
> *Draught.* In *England*, a small allowance on weighable goods, made by the King to the importer, or by the seller to the buyer, to insure full weight.

Webster's 1890 edition gives practically the same definition of draff, and also the following:

> *Draught.* An allowance on weighable goods [*Eng.*].
>
> *Draft.* An allowance or deduction made from the gross weight of goods. *Simmonds.*

Worcester gives the following definitions:

Draff. Refuse, lees; dregs; anything vile and worthless.

Draught. An allowance in weighing commodities.

The Century Dictionary, following the Imperial Dictionary (a Scotch publication), gives substantially the same definition of *draff*, and also the following:

Draft. An allowance for waste of goods sold by weight; also an allowance made at the custom-house on excisable goods. [*Eng.*]

Draft. *Same as draff.*

Cassell's Encyclopædic Dictionary gives the following:

Draff. 1. *Lit.* The refuse or grains of malt after brewing or distilling; lees; dregs; refuse generally; hogs wash. "'Tis old but true, still swine eat all the draff." Shakespeare, "Merry Wives," IV, 2.

2. *Fig.* The dregs or refuse of anything; anything vile and worthless. "All maner monkes and fryars like draffe." Tyndall, Workes, p. 359.

Draft, drafte. II, 2, *Comm.* An allowance made for waste in goods sold by weight; also an allowance made at the custom-house upon excisable goods.

Draught. II, 5, *Comm.* An allowance for waste made on goods sold by weight; also an allowance on excisable goods.

"Draught" made its first appearance in our tariff legislation as "drafts" or "draught" indiscriminately in the tariff act of August 4, 1790, ch. 35, § 35, as printed in 1 Stat., 166:

And be it further enacted, that the following allowances shall be made for the drafts and tare of the articles subject to duty by weight, that is to say: For draught on any quantity of one hundredweight

> or 112 pounds and over, one pound; on any quantity above one and not exceeding two hundredweight, two pounds, etc. * * * For tare on every whole chest of bohea tea, seventy pounds, etc.

This act seems to have passed without debate, and the annals of Congress throw no light on its interpretation.

The provision above quoted was reenacted in the tariff act of March 2, 1799, ch. 22, § 58, 1 Stat., 671, without change so far as draught is concerned, except that the word is spelled "draft" in both places.

While this provision of the acts of 1790 and 1799 remained in force, there is no reported decision of any court authoritatively defining the word in question. It was, however, explained by Mr. Justice Woodbury in *Marriott* v. *Brune*, 9 How., 619, 633, as follows:

> Another reduction is made in weight for tare and draft. (1 Stats. at Large, 166.) The last should be *draff*, meaning dust and dirt, and not what is generally meant by "draught" or "draft."

While this is purely *obiter dictum*, it is entitled to weight as showing what at that time was the understanding of the Treasury Department, Mr. Justice Woodbury having been for a considerable time Secretary of the Treasury, and doubtless speaking authoritatively to this extent. His definition of "draft," as meaning "draff," is supported by the Century Dictionary as above quoted.

After the act had been repealed by implication, however, the question came up in the circuit court before Mr. Justice Nelson in 1863, and he made a contrary ruling (*Napier* v. *Barney*, 5 Blatch., 191), saying:

> Draft and tare in a commercial sense and usage have a separate and distinct meaning and application.

> The former is an allowance made the merchant when the duty is ascertained by weight, as in the present instance, to insure good weight to him. As defined in some other books it is "a small allowance in weighable goods made by the King to the importer." It is to compensate for any loss that may occur from the handling of the scales in the weighing, so that when weighed the second time the article will hold out good weight.

Evidently neither the remarks of Mr. Justice Woodbury in the Supreme Court, above cited, nor the possibility of "draft" being used for "draff," was suggested to Mr. Justice Nelson in this case.

The case just cited has been quoted as establishing the definition of "draft" by the American and English Encyclopædia of Law and by Abbott's and Anderson's Law Dictionaries. These compilers seem likewise to have overlooked the earlier definition.

It may be noted that, doubtless, at the time of Mr. Justice Nelson's definition the earlier traditions of the Treasury Department as to the meaning of the word "draft" had become dimmed, for the acts of 1790 and 1799 in this particular applied only to the goods dutiable by weight; that is, to goods subject to specific duties, while during the period from 1846 to 1861 our tariff system was entirely *ad valorem*. (See Treasury Regulations of 1857, p. 195.) This would account for the fact that the earlier departmental construction of the term was not brought to the attention of the court. The Morrill tariff of 1861 was recognized by the Secretary as reestablishing the system of draught allowances with the restored

specific duties (circular of March 21, 1861; *Moke* v. *Barney*, 5 Blatchf., 274). The circular throws no light on the construction of the word.

The only other judicial definition is that contained in the present record, and reported as *Wright, &c., Company* v. *Seeberger*, 44 Fed. Rep., 258.

Prior to the case before Mr. Justice Nelson, which arose upon an importation made in December, 1861, all allowances for draft had been forbidden by the tariff act of July 14, 1862, ch. 163, § 16, 12 Stat., 558, now incorporated in the Revised Statutes as § 2898, above quoted.

It has been claimed that the correctness of the ruling in the case at bar was recognized by the Supreme Court in *Earnshaw* v. *Cadwalader*, 155 U. S., 247, 254, 261. This, however, is a misapprehension. The present case was merely distinguished by the Supreme Court as not applicable. In the Earnshaw case the deduction claimed by the importers was disallowed.

III.

Assuming that this dirt is not "draft," is plaintiff therefore entitled to recover? This was taken for granted by Judge Blodgett, but need not be conceded.

Plaintiff invoiced its goods as 96% flaxseed and 4% "impurities." Goods are not entitled to free entry simply because they are "impurities." There is no such general item in the free list, though specific impurities may be found in it. (Tariff of 1883, par. 505.) Impurities may be dutiable (*Id.*, par. 356) or even prohibited from entering the country. (*Id.*, § 2491.)

It is therefore necessary to inquire what the impurities were in this case. It appears that they were "dust, composed of clay, sand, and gravel." But "all earth or clays, unwrought or unmanufactured, not specially enumerated," were dutiable at $1.50 per ton. (*Id.*, par. 96.) Sand was held to be exempt as a "crude mineral." (Syn. Dec., 8510.) Some dusts are rated very high for customs purposes. (Syn. Dec., 7816.) It would seem to have been necessary for plaintiff, if claiming any of this dust to be free from duty, to supply evidence as to the proportion of the clay to the sand and gravel.

A contrary ruling might lead to evasions of the customs laws, while the practice of requiring the collectors to ascertain and deduct all such impurities would be very difficult to administer. (See Syn. Dec., 13553.)

Respectfully submitted.

EDWARD B. WHITNEY,
Assistant Attorney-General.

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Office Supreme Court, U. S.
FILED.
FEB 6 1895
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1894.

No. 219.

ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO,
PLAINTIFF IN ERROR,

vs.

WRIGHT & LAWTHER OIL AND LEAD MANUFACTURING COMPANY,
DEFENDANT IN ERROR.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR DEFENDANT IN ERROR.

PERCY L. SHUMAN,
For Defendant in Error.

BARNARD & MILLER, PRINTERS.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1894.

NO. 219.

ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO,

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vs.

WRIGHT & LAWTHER OIL AND LEAD MANUFACTURING COMPANY,

DEFENDANT IN ERROR.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR DEFENDANT IN ERROR.

In his brief the Honorable Assistant Attorney-General has omitted reference to the basis of the importers' claim in this case,—as follows:

Art. 604, General Regulations under the Customs and Navigation Laws of the United States, 1884, provides that "allowances for *draff* * * * cannot be allowed except upon goods paying exclusively specific duties."

This provision rendered necessary a correct understanding of the meaning of the word *draff*.

All of the standard dictionaries agree that *draff* means "refuse generally." In this sense it was understood by

the Secretary of the Treasury at the time the above regulation was promulgated.

Affirmatively stated, "*Draff* can be allowed on goods "paying exclusively specific duties."

The court's special finding of facts is: "The proof in "this case shows without dispute that the seed con- "tained dust composed of clay, sand, and gravel to an "average of four per cent." This finding sustained the statement upon the invoice, and the claim of the importer upon which the suit was based.

There was no claim for *draught* or *draft*, which, as is shown by the language of the Act of August 4, 1790, Ch. 35, Sec. 35, 1 Stat. 166, was an arbitrary allowance, regulated according to the gross weight of an importation, and has no reference to impurities or extraneous matter in an importation.

The above regulation was, no doubt, based upon the language used by Mr. Justice Woodbury, in the case of *Marriott* v. *Bourne*, 9 How., 632, defining *draff* meaning dust and dirt, and not what is generally meant by "draught" or "draft."

Mr. Justice Blodgett, in the Circuit court, in this case (Transcript, 7) says that "draught" and "draft" have no reference to such deductions as should be made to ascertain the exact, or as nearly as possible the exact, amount of clean seed imported.

He also says in the same connection:

"I am quite clear in my conclusion that the importer "has the right to have a deduction made for dirt and "impurities of that character (clay, sand and gravel "dust) which are contained in the seed."

Respectfully submitted.

PERCY L. SHUMAN.

157, 183

Office Supreme Court, U. S.
FILED.
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CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1894.

ANTHONY F. SEEBERGER, Collector of Customs for the Port and District of Chicago,
Plaintiff in Error,
versus
WRIGHT & LAWTHER OIL & LEAD MANUFACTURING COMPANY.

No. 219.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Brief for the National Lead Company.

(Filed by Consent.)

C. B. ALEXANDER,
Of Counsel for National Lead Company.

C. G. Burgoyne, Walker and Centre Sts., N. Y.

In the Supreme Court of the United States.

OCTOBER TERM, A. D. 1894.

ANTHONY F. SEEBERGER, Collector of Customs for the Port and District of Chicago,
Plaintiff in Error,
VERSUS
WRIGHT AND LAWTHER OIL AND LEAD MANUFACTURING COMPANY.

No. 219.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Brief for the National Lead Company.

(Filed by consent.)

There is a general definition of the word "draft" or "draught" in the Century Dictionary, not referred to in the briefs before the Court:

> "The act of drawing or taking away *a part*: the "act of taking a number or *a portion* from an "aggregate; a levy; the act of depleting or reduc- "ing in number, force, etc., as 'a draft upon his "resources.'"

The essential idea expressed by this definition is the taking away of a *part* from a previously existing *whole*. Applying this definition to the case before the Court,

the word "draught," as used in the statute, refers to a deduction of say two pounds of flax seed from the whole bushel of fifty-six pounds of flax seed.

It does not mean separating one *whole* from another *whole*, as would be the case if a separation were made of a whole of two pounds of impurities from another whole of fifty-six pounds of flax seed.

This has been the generally accepted signification of the word "draught" or "draft" in this connection. The Honorable Assistant Attorney-General refers, on page 3 of his brief, to the meaning of the word "draught" in England, in connection with commercial transactions, but assumes, without stating facts in support of his assumption, that no such use or application of the word has been customary in the United States.

Aside from the fact that the dictionary definition above given is in accord with this English use of the word "draught," it is a fact that the use of this word in this sense has prevailed in this country for more than seventy years, commencing with 1790. Mr. Justice BLODGETT, in the court below, referred to the thirty-fifth section of the act of August 4th, 1790, in which the word is used in this sense; also to the same provision in Section 58 of the Act of March 2d, 1799, which continued to be the law until the passage of Section 16 of the Act of July 14, 1862.

The definition given by the courts to this word in this connection is in accord with the above definition.

Mr. Justice NELSON's remarks on this subject in Napier vs. Barney, 5 Blatchf., 191, are quoted on pages 6 and 7 of the brief for the plaintiff in error.

The correctness of this definition was also recognized by this Court in Earnshaw vs. Cadwalader, 145 U. S., 247. Although it was held in that case that, in estimating the dutiable weight of iron ore, no deduction could be allowed for water mechanically present, yet it was clearly recognized that the rule is otherwise as to impurities such as those now under consideration. The Court say :

"The principle is different from that in regard "to dirt clinging to the skin of a potato, or clay, "sand and gravel mixed with flaxseed. In those "cases the dirt, clay, sand and gravel are plainly "discoverable, and readily eliminated, and do not "inhere in the article, as moisture does in iron "ore or in hay."

In a case before the General Appraisers at New York, in November, 1892 (Treasury Decisions, No. 13,553), it was assumed that this was the effect of the opinion of this Court. In this case it was said, after stating the point decided in Wright Company vs. Seeberger, that "the same principle is recognized by the Supreme Court of the United States in Earnshaw vs. Cadwalader, 145 U. S., 247."

The above distinction made by this Court in the case of Earnshaw vs. Cadwalader seems to negative the theory of the Honorable Assistant Attorney-General that the impurities under consideration are dutiable.

C. B. ALEXANDER,
Of Counsel for National Lead Company.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 746.

J. T. STOKES, A. J. KENDRICK, MORGAN MIXON, ET AL.,
PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

FILED JULY 9, 1894.

(15,630.)

(15,630.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 746.

J. T. STOKES, A. J. KENDRICK, MORGAN MIXON, ET AL., PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

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1 UNITED STATES OF AMERICA:

District Court of the United States for the Southern District of Alabama for the May Term, A. D. 1893.

The grand jurors of the United States of America, chosen, selected and sworn within and for the southern district of Alabama, in the name and by the authority of the United States of America, upon their oaths do find and present that J. T. Stokes, A. J. Kendrick, Morgan Mixon, Abraham Kendrick, Samuel H. Mixon, E. H. Cook, T. B. Brown, D. J. Morgan, B. S. Lane, William T. Pitts, T. R. Jones, J. R. Cook, John W. Tisdale and J. D. Pinkerton, whose names, other than as herein stated, are unknown to the grand jury, and other persons whose names are also unknown to the grand jury, late of the district aforesaid, heretofore, to wit, on the first day of May, eighteen hundred and ninety-three, and before the finding of this indictment, and within the said southern district of Alabama, and within the jurisdiction of this court, did then and there conspire, combine, confederate and agree together to commit the act made an offense and crime by section 5480 of the Revised Statutes of the United States as amended by act of Congress March 2d, 1889, that is to say: the said defendants conspired, combined, confederated and agreed together in devising, and intending to devise, a scheme and artifice to defraud various persons, firms and companies out of their prop-
2 erty, goods and chattels, and particularly to defraud Bion F. Reynolds, and W. L. Douglas Shoe Company of Brockton, Massachusetts; E. B. Bowen, Evans & Company, B. C. Young & Company, Dexter Shoe Company, and Sage & Company, Boston, Massachusetts; L. C. Lull & Company, Kalamazoo, Michigan; W. F. Main & Company, Iowa City, Iowa; Heywood Boot and Shoe Company, Worcester, Massachusetts; Schaltman Bros., New York city, New York; W. F. Vandiver & Company, Montgomery, Alabama; James McPhillips, Mobile Stationery Company, and W. B. Vail, Mobile, Alabama; and other persons, firms and companies to the grand jurors unknown, of their property, goods and chattels. The scheme and artifice to defraud as aforesaid was to be carried out by each of said defendants representing himself to be engaged as a dealer in various kinds of merchandise and goods, and to have an office, and to use in his correspondence, sheets of paper with his pretended business printed thereon; and the said defendants were mutually to represent each other to the said persons, firms and companies, and others unknown to the grand jurors, intended to be defrauded as aforesaid, as financially responsible and entitled to receive various kinds of merchandise and goods on credit, and the said scheme and artifice to defraud as aforesaid was to be further effected by ordering merchandise and goods from the persons, firms and companies as aforesaid, and from other persons, firms and companies to the grand jurors unknown, having no intention, then and there, to pay for such merchandise and goods so ordered as afore-

said, but to convert the said goods and merchandise to the use of each and of each other; that the post-office establishment of the United States was to be used for the purpose of executing said scheme and artifice to defraud, as aforesaid pursuant to said conspiracy, by opening correspondence with the said persons, firms and companies, and other persons, firms and companies unknown to the grand jurors, and by inciting said persons, firms and companies, and others as aforesaid, to open correspondence with the said de-
3 fendants by means of the post-office establishment of the United States; and that, for the further purpose of executing said conspiracy to defraud as aforesaid, the said J. T. Stokes did wrongfully and unlawfully deposit in a certain post office of the United States, to wit: the post office at Olivia, Conecuh county, Alabama, in the southern district of Alabama, on or about the thirtieth day of November, eighteen hundred and ninety-one, a letter addressed to Bion F. Reynolds, Brockton, Massachusetts, which said letter was substantially in words and figures as follows, to wit:

Office of

J. T. STOKES,

Dealer in

DRY GOODS, CLOTHING, GROCERIES, HARDWARE,

SADDLERY AND PLANTATION SUPPLIES.

OLIVIA, Ala., Nov. 30, 1891.

Mr. Bion F. Reynolds,
Brockton, Mass.

Dear Sir:—

Please send me by return mail samples of your $3 & $4 Shoes as follows:—

1 pr.	$3	shoes,	Lace	Size 8	width 5	$2.60
1 "	$4	"	Cong	" 9	5	3.10
1 "	$4	"	Lace	" 8	5	3.10
						$8.80

I inclose chk. to cover. Please give me best prices on same goods in case lots for net cash & obg.

Truly yrs.

J. T. Stokes.

Saw your ad. in Boot & Shoe Recr.

and which said letter was then and there enclosed in a sealed envelope, deposited in the post office of Olivia as aforesaid, to be conveyed by the post-office establishment of the United States to the said Bion F. Reynolds, and the said letter contained a check
4 on Morris & Company, bankers, Montgomery, Alabama, for eight and $\frac{80}{100}$ dollars, payable to the order of the said Rey-

nolds, and the amount of the said check was equal in amount to the merchandise and goods ordered by the said Stokes in said letter from the said Reynolds; the said Stokes had no money on deposit with the said Morris & Company, bankers, as aforesaid, when he drew and enclosed said check, nor had he funds deposited with the said bankers at any time, but the sending of the said check was pursuant to the conspiracy aforesaid, a scheme and artifice to defraud the said Bion F. Reynolds of his goods and merchandise by not paying, and intending, then and there, not to pay for the merchandise so ordered, but convert the same to the use of the said J. T. Stokes and other defendants named as aforesaid.

Still further to effect the object of the said conspiracy, the said J. T. Stokes did, on or about the twentieth day of June, eighteen hundred and ninety-one, deposit in the said United States post office at Olivia, Conecuh county, Alabama, a letter addressed "L. C. Lull Co." which said letter was substantially in words and figures as follows, to wit:

Office of

J. T. STOKES,

Dealer in

DRY GOODS, CLOTHING, GROCERIES, HARDWARE,

Saddlery and Plantation Supplies.

OLIVIA, Ala., June 20th, 1891.

L. C. Lull Co

Dear Sir if you pleas Ship me to Dunham Ala your No 38 eliptic Spring bugy paten wheel 4 ft 8 in track with color black on your terms and i will refur you to
Mr B S law Olivia Ala
Mr T m Jons Olivia Ala.
hoping to hear soon

Yours truly

J. T. Stokes.

which said letter was then and there enclosed in a sealed envelope deposited in the said post office of Olivia as aforesaid, addressed and directed to L. C. Lull Company, Kalamazoo, Michigan.

5 The said Stokes referred the said L. C. Lull Company to B. S. Law and T. M. Jons, Olivia, Alabama, meaning thereby, B. S. Lane and T. M. Jones of Olivia, Alabama, two of his co-conspirators named as aforesaid, the purpose being by such reference to deceive the said L. C. Lull Company into shipping the goods requested in his said letter to said company by the said Stokes, the said Stokes not paying, and then and there intending not to pay for the merchandise and goods so ordered as aforesaid from said L. C. Lull Company, but to convert the same to his own use, and the use of the said B. S. Lane and T. M. Jones as aforesaid.

And still further to effect the object of the said conspiracy, the said A. J. Kendrick, on or about the eighth day of September,

eighteen hundred and ninety-one, did wrongfully and unlawfully deposit, and cause to be deposited in a certain post office in the United States, to wit: the post office at Olivia, Conecuh county, Alabama, in the said southern district of Alabama, in a sealed envelope, a letter addressed to Sage & Company, Boston, Massachusetts, which said letter was substantially in words and figures, as follows, to wit:

Office of

A. J. KENDRICK,

Dealer in

GENERAL MERCHANDISE, DRY GOODS, GROCERIES,

Notions, Hardware, Tinware, Boots, Shoes, Hats, Etc.

OLIVIA, Ala., Sept. 8th, 1891.

Sage & Co.
Boston, Mass.

Gentlemen

As per your adv in B & S R ship me Via frt Georgiana Ala

1 dz	mens	oxford	at	40c	Each
1 "	Boys	"	"	38	"
1 "	Youths	"	"	34	"
1 "	Womens	"	"	38	"

If you have thoes on Hand at Present Please Ship at once
Hoping to Heare from you soon Yours truly
A. J. Kendrick.

6 the purpose being to obtain from the said Sage & Company, pursuant to the said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said Sage & Company of their property as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said A. J. Kendrick, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said A. J. Kendrick did, on or about the fourteenth day of December, eighteen hundred and ninety-one, wrongfully and unlawfully deposit, and cause to be deposited in the said United States post office at Olivia, Conecuh county, Alabama, in a sealed envelope, a letter addressed to Haywood Boot and Shoe Company, Worcester, Massachusetts, which said letter was substantially in words and figures as follows, to wit:

Office of

A. J. KENDRICK,

Dealer in

GENERAL MERCHANDISE, DRY GOODS, GROCERIES, NOTIONS, HARDWARE, TINWARE, BOOTS, SHOES, HATS, Etc.

OLIVIA, ALA., December 14, 1891.

Heywood Boot and Shoe Co.,
Worchester, Mass.:

Gentlemen—

Please send me 1. Sample Dz Mens Shoes Jest Like the Inclosed Cut Ad In B & S Recorder & also Best Net Cash Prices
Please send Samples at once the Photograph Suits my Eye I refer to American Rubber Co Boston
Union Shoe Chicago
and many otheres.

Yours truly

A. J. Kendrick

7 the purpose being to obtain from the said company, pursuant to said conspiracy, the merchandise described in said letter, with intent to defraud the said Heywood Boot and Shoe Company of their property and goods as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said A. J. Kendrick, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of said conspiracy the said A. J. Kendrick did, on or about the seventh day of January, eighteen hundred and ninety-two, wrongfully and unlawfully deposit, and cause to be deposited, in said United States post office at Olivia, Alabama, in a sealed envelope, a letter addressed to Schaltman Brothers, New York, which said letter was substantially in words and figures as follows, to wit:

Office of

A. J. KENDRICK,

Dealer in

General Merchandise, Dry Goods, Groceries, Notions, Hardware, Tinware, Boots, Shoes, Hats, Etc.

OLIVIA, ALA., Jan. 7, 1892.

Schaltman Bros
New York.

Dear Sirs

Please send me a few sample suits as Per ad & Best Prices to the Trade
Send both Common & Fine Grades send them on approval allow-

ing me the Privilage on returning them if not satisfactory If they suit will Please Bill at 10 day

Yours truly

A. J. Kendrick

the purpose being to obtain from the said Schaltman Brothers the merchandise described in said letter with intent to defraud the said Schaltman Brothers, pursuant to said conspiracy of their
8 property and goods as aforesaid, by not paying, and intending then and there not to pay, for said property and goods, but to convert the same to the use of him, the said A. J. Kendrick, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of said conspiracy the said Samuel H. Mixon did, on or about the ninth day of October, eighteen hundred and ninety-one, wrongfully and unlawfully deposit, and cause to be deposited, in a certain post office of the United States, to wit: the post office at Mixon, Conecuh county, Alabama, in the said southern district of Alabama, in a sealed envelope, a letter addressed to L. C. Lull & Company, Kalamazoo, Michigan, which said letter was substantially in words and figures as follow, to wit:

Office of

SAM'L H. MIXON

Dealer in

GENERAL MERCHANDISE

Notions, Novelties, Etc.

Mixon, Ala., Oct. 9th, 1891.

L. C. Lull & Co.,

Kalamazoo, Mich.:

Dear Sir—Please ship to Dunham Ala one Road Cart No 2 torsion spring two passenger Price $16.50c on 15 days time & oblige

truly yours

S. H. Mixon.

P. S. if it proves satisfacture I will give you further orders.

S. H. Mixon.

the purpose being to obtain from the said L. C. Lull & Company the merchandise described in said letter, with intent to defraud the said L. C. Lull & Company, pursuant to said conspiracy, of their
9 property and goods as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said Samuel H. Mixon, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of said conspiracy the said Samuel H. Mixon did, on or about the sixteenth day of July, eighteen hundred and ninety-one, wrongfully and unlawfully de-

posit and cause to be deposited in said United States post office at Mixon, Alabama, in a sealed envelope, a letter addressed to L. C. Lull & Company, Kalamazoo, Michigan, which said letter was substantially in words and figures as follows, to wit:

Office of

SAM'L H. MIXON,

Dealer in

GENERAL MERCHANDISE,

Notions, Novelties, Etc.

MIXON, ALA., Jul 16, 1891.

L. C. Lull & Co.

Kalamazoo, Mich.

Dear Sirs—

Please ship me your No. 2 Torsion Spring Cart by cheapest frt. route to Georgiana, Ala. as per your terms. I desire wide track.

As to my responsibility &c. I refer you to Thos. M. Dean, of Olivia, Ala.

Hoping to hear favorably from you soon,

Yours very respy.

Sam'l H. Mixon.

the purpose being to obtain from the said L. C. Lull & Company the merchandise described in said letter, with intent to defraud the said L. C. Lull & Company, pursuant to said conspiracy, of their property and goods as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said Samuel H. Mixon, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of said conspiracy the said Samuel H. Mixon did, on or about the twenty-ninth day of December, eighteen hundred and ninety-one, wrongfully and unlawfully deposit, and cause to be deposited in said United States post office at Mixon, Alabama, in a sealed envelope, a letter addressed to L. C. Lull & Company, Kalamazoo, Michigan, which said letter was substantially in words and figures as follows, to wit:

Office of

SAM'L H. MIXON,

Dealer in

GENERAL MERCHANDISE,

Notions, Novelties, Etc.

MIXON, Ala., Dec. 29th, 1891.

Mess L. C. Lull & Co.
Kalamazoo Mich

Gents. Yours of 2nd to hand. If you do not know anything about my stand I refer you to Cook & Pinkerton, Olivia, Ala. I have reference to the No. 2 Cart ordered of you sometime since.

Please ship at once,

Yours Very Truly

Sam'l H. Mixon.

"Cook & Pinkerton" mentioned in said letter being E. H. Cook and J. D. Pinkerton, co-conspirators as aforesaid, the purpose being to obtain from the said L. C. Lull & Company the merchandise described in said letter, with intent to defraud the said L. C. Lull & Company, pursuant to said conspiracy, of their property and goods as aforesaid, by not paying, and intending then and there not
11 to pay for said property and goods, but to convert the same to the use of him, the said Samuel H. Mixon, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said Samuel H. Mixon did, on or about the ninth day of March, eighteen hundred and ninety-one, wrongfully and unlawfully deposit, and cause to be deposited in said United States post office at Mixon, Alabama, in a sealed envelope, a letter addressed to W. L. Douglas Shoe Company, Brockton, Massachusetts, which said letter contained what purported to be a credit statement of one William T. Pitts, of Mixon, Conecuh county, Alabama, a co-conspirator as aforesaid, falsely representing, among other things, that said William T. Pitts was worth in money and property, over and above his debts and liabilities, eighty-one hundred and forty-five dollars, whereas in truth and in fact the said Pitts had no visible property, and the said Samuel H. Mixon then and there knew that said William T. Pitts had no visible property over and above his debts and liabilities, but sent, as aforesaid, the said false credit statement with intent to deceive and to defraud the said W. L. Douglas Shoe Company of their property and goods by not paying, and intending, then and there, not to pay for said property and goods, but to convert the same to the use of him, the said Samuel H. Mixon and the said William T. Pitts, and to the use of others of their co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said E. H. Cook, on or about the twelfth day of November, eighteen hundred and ninety-one, did wrongfully and unlawfully deposit,

and cause to be deposited in a certain post office of the United States, to wit: the post office at Olivia, Conecuh county, Alabama, in the said southern district of Alabama, in a sealed envelope, a letter addressed to W. L. Douglas Shoe Company, Brockton, Massachusetts, which said letter was substantially in words and figures as follows, to wit:

12

Office of

T. B. BROWN,

Dealer in

GENERAL MERCHANDISE.

OLIVIA, Ala., Novr. 12th 1891.

W. L. Douglas Shoe Co.
Brockton, Mass.

Gentlemen:—I herewith send application &c. for agency of your shoes at this place, with order for 3 doz. prs. which I trust will receive your kind attention, & obg.

Yours very truly
T. B. Brown.

and the said E. H. Cook, to effect the object of said conspiracy as aforesaid, used the name of T. B. Brown, a name other than his own proper name, the said Brown being then and there an illiterate colored man, owning no property of any kind whatsoever, and being ignorant of the fraudulent use of his name in the conspiracy as aforesaid, the said Cook then and there intending to obtain from said Brown an order for the delivery of any property and goods that might be shipped to the said Brown by the said W. L. Douglas Shoe Company as aforesaid, and the said Cook did receive from the said Brown an order for the delivery of the said goods, and received the said property and goods that were consigned to the said Brown in response to his said letter, the purpose being to obtain from the said W. L. Douglas Shoe Company the merchandise described in said letter, with intent to defraud the said W. L. Douglas Shoe Company, pursuant to said conspiracy, of their property and goods as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said E. H. Cook, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said E. H. Cook, on or about the eleventh day of December,
13 eighteen hundred and ninety-one, did wrongfully and unlawfully deposit, and cause to be deposited in said United States post office at Olivia, Alabama, in a sealed envelope, a letter addressed to W. L. Douglas Shoe Company, Brockton, Massachusetts, which said letter was substantially in words and figures as follow, to wit:

Office of

T. B. BROWN

Dealer in

GENERAL MERCHANDISE

Hardware, Crockery, Drugs, Medicines, Etc.

OLIVIA, ALA. Dec. 11th 1891.

W. L. Douglas Shoe Co.
Brockton, Mass.

Gentlemen

Case of shoes No. 886 recd. and Examined found to contain 3 doz. Boxes of scraps of leather instead of shoes please notify me at once what to do with them Also shipp the shoes that the order calls for at your earliest convenience. by doing so you will greatly oblige

Very Respty. Yours

T. B. Brown

and the said E. H. Cook, to effect the object of said conspiracy as aforesaid, used the name of T. B. Brown, a name other than his own proper name, the said Brown being then and there an illiterate colored man, owning no property of any kind whatsoever, and being ignorant of the fraudulent use of his name in the conspiracy as aforesaid, the said Cook then and there intending to obtain from said Brown an order for the delivery of any property and goods that might be shipped to the said Brown by the said W. L. Douglas Shoe Company as aforesaid, and the said Cook did receive from the said Brown an order for the delivery of the said goods, and received the said property and goods that were consigned to the said Brown in response to his said letter, the purpose being to obtain
14 from the said W. L. Douglas Shoe Company the merchandise described in said letter, with intent to defraud the said W. L. Douglas Shoe Company, pursuant to said conspiracy, of their property and goods as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said E. H. Cook, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said E. H. Cook, on or about the twenty-sixth day of August, eighteen hundred and ninety-one, did wrongfully and unlawfully deposit, and cause to be deposited in said United States post office at Olivia, Alabama, in a sealed envelope, a letter addressed to L. C. Lull & Company, Kalamazoo, Michigan, which said letter was substantially in words and figures as follow, to wit:

Office of

T. B. BROWN

Dealer in

GENERAL MERCHANDISE

Hardware, Crockery, Drugs, Medicines, Etc.

OLIVIA, ALA. Aug. 26th 1891.

L. C. Lull & Co.
Kalamazoo, Mich.

Dear Sirs,

Please ship me *one* No. 100 Cart to Garland Ala, at once as per your terms, and I will remit cash for same,

I remain yours &c,

T. B. Brown

and the said E. H. Cook, to effect the object of said conspiracy as aforesaid, used the name of T. B. Brown, a name other than his own proper name, the said Brown being then and there an illiterate colored man, owning no property of any kind whatsoever, and being ignorant of the fraudulent use of his name in the conspiracy as aforesaid, the said Cook then and there intending to obtain from said Brown an order for the delivery of any property and goods that might be shipped to the said Brown by the said L. C. Lull & Company as aforesaid, and the said Cook did receive from the said Brown an order for the delivery of the said goods, and received the said property and goods that were consigned to the said Brown in response to his said letter, the purpose being to obtain from the said L. C. Lull & Company the merchandise described in said letter, with intent to defraud the said L. C. Lull & Company, pursuant to said conspiracy, of their property and goods as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said E. H. Cook, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said B. S. Lane, on or about the fourteenth day of December, eighteen hundred and ninety-one, did wrongfully and unlawfully deposit, and cause to be deposited in a certain post office of the United States, to wit: the post office at Olivia, Conecuh county, Alabama, in the said southern district of Alabama, in a sealed envelope, a letter addressed to W. L. Douglas Shoe Company, Brockton, Massachusetts, which said letter was substantially in words and figures as follows, to wit:

B. S. Lane
Dealer in
General Merchandise, Hardware, Crockery, Etc.

OLIVIA, Alabama, Dec. 14, 1891.

W. L. Douglas
Brockton, Mass.

Dear Sir:—

Inclosed find check for which please send me a pair
16 of your $4.00 Shoes *by mail*. Size wanted 8. Width 5. Lon. Cap Toe. Lace. I send 25c over for postage, as it is far more convenient to me to have the shoes come by mail.

Truly yours B. S. Lane

the purpose being to obtain from the said W. L. Douglas Shoe Company, pursuant to the said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said W. L. Douglas Shoe Company of their property as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said B. S. Lane, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said B. S. Lane, on or about the seventh day of December, eighteen hundred and ninety-one, wrongfully and unlawfully did deposit, and cause to be deposited in the said United States post office at Olivia, Conecuh county, Alabama, in a sealed envelope, a letter addressed to B. C. Young & Company, Boston, Massachusetts, which said letter was substantially in words and figures as follow, to wit:

B. S. Lane
Dealer in
General Merchandise, Hardware, Crockery, Etc.

OLIVIA, Alabama, Dec. 7, 1891.

B. C. Young & Co.
Boston, Mass.

Dear Sirs:—I would be pleased to give your Custom Work a trial, and if agreeable to yourselves please exp. me samples as follows, via Greenville, Ala. and invoice at your usual terms of credit.

1	pr.	Men's	Bals.	in	Calf,	Size	8	Width	5	Lon. Cap Toe	$3.50
1	"	"	Cong.	"	Kangaroo,	"	9	"	5	" " "	3.75
1	"	"	Bals.	"	Fr. Pat. Calf	Size	8	"	5	" " "	4.00
											$11.25

Please give me your best figures on same goods in case lots
17 for spot cash. I make this as a trial & if satisfactory &c. will be pleased to give you further trade.

Truly yrs.

B. S. Lane

the purpose being to obtain from the said B. C. Young & Company, pursuant to the said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said B. C. Young & Company of their property as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said B. S. Lane, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said B. S. Lane did, on or about the twenty-third day of November, eighteen hundred and ninety-one, wrongfully and unlawfully deposit, and cause to be deposited in the said United States post office at Olivia, Conecuh county, Alabama, in a sealed envelope, a letter addressed to E. B. Bowen, Evans & Company, Boston, Massachusetts, which said letter was substantially in words and figures as follow, to wit:

Office of B. S. LANE,

Dealer in

Foreign and Domestic Dry Goods and Groceries.

OLIVIA, Ala., Nov'r 23–1891.

E. B. Bowen, Evans & Co.
Boston, Mass.

Dear Sirs:—

Please ship me a doz. each of your "original Stem Winder" & "Silver Coin" Shoes by cheapest frt. line via Greenville, Ala.

I make this as a trial order and should your goods prove good quality for the prices, I shall be pleased to place further and larger orders with you for goods in this line at an early date, as I 18 expect replenishing my old stock with a large and entirely new class and manufacture of goods. Saw your ad. in Boot & Shoe Recorder.

Hoping to hear from you at an early date, I remain,
Yours respy.
B. S. Lane.

the purpose being to obtain from the said E. B. Bowen, Evans & Company, pursuant to the said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said E. B. Bowen, Evans & Company of their property as aforesaid, by not paying, and intending then and there not to pay for the said property and goods, but to convert the same to the use of him, the said B. S. Lane, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said T. R. Jones, on or about the fourth day of June, eighteen hundred and ninety-one, wrongfully and unlawfully did deposit, and caused to be deposited in the said United States post office at Olivia, Conecuh county, Alabama, in a sealed envelope, a letter addressed to L. C. Lull & Company, Kalamazoo, Michigan, which said letter was substantially in words and figures as follow, to wit:

Office of

T. R. JONES,

Dealer in

GENERAL MERCHANDISE.

OLIVIA, ALA, June 4, 1891.

L. C. Lull & Co
Kalamazoo
Michigan

Dear Sir

T B Brown financial standing is good i have known him for 5 years he is tru honest an trustworthy in every respect and you will be perfectly safe in leting T B. Brown $1000 of goods

Yours tru

T R Jones

19 and the said T. R. Jones, when he referred to the financial standing of T. B. Brown in said letter, knew that the said T. B. Brown, one of the conspirators as aforesaid, was an illiterate colored man and possessed no property of any kind whatsoever, and the said T. R. Jones, in so certifying to the financial standing of the said Brown intended to deceive the said L. C. Lull & Company by inducing them, through the said letter, to ship to the said Brown their property and goods to the amount of one thousand dollars upon credit, knowing that the said Brown was unable to pay for the said property and goods, and he, the said T. R. Jones, not intending then and there to pay for the same, but to convert, pursuant to said conspiracy, the said property and goods to the use of him, the said T. R. Jones, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of *of* the said conspiracy, the said D. J. Morgan, on or about the thirtieth day of June, eighteen hundred and ninety-one, wrongfully and unlawfully did deposit, and cause to be deposited in the said United States post office at Olivia, Conecuh county, Alabama, in a sealed envelope, a letter addressed to L. C. Lull & Company, Kalamazoo, Michigan, which said letter was substantially in words and figures as follow, to wit:

Office of

D. J. MORGAN,

DEALER IN GENERAL MERCHANDISE,

Notions, Novelties, &c.

OLIVIA, Ala., June 30th, 1891.

L C Lull & Co
Gentlemen

I was in T B Browns office and seen your catalogue and your prices was cheap and I wanted one of your Buggys on your terms

20 pleas ship at once No. 36 elliptic Spring Buggy to Georgiana Ala Wide track leather cushions and back and also leather top with shafts and you will oblige

D. J. Morgan

Reference. A. J. Kendrick
A Kendrick & Co.
of Olivia, Ala.

A. J. Kendrick and A. Kendrick & Company mentioned in said letter being A. J. Kendrick and Abram Kendrick, co-conspirators as aforesaid, the purpose being to obtain from the said L. C. Lull & Company the merchandise described in said letter, with intent to defraud the said L. C. Lull & Company, pursuant to said conspiracy, of their property and goods as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said D. J. Morgan, and to the use of the said A. J. Kendrick and Abram Kendrick, and to the use of others of their co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said T. B. Brown did, on or about the twelfth day of November, eighteen hundred and ninety-one, wrongfully and unlawfully deposit, and cause to be deposited in the said United States post office at Olivia, Conecuh county, Alabama, in a sealed envelope, a letter addressed to W. L. Douglas Shoe Company, Brockton, Massachusetts, which said letter was substantially in words and figures as follow, to wit:

Office of

T. B. BROWN

Dealer in

GENERAL MERCHANDISE,

OLIVIA, Ala., Novr. 12th, 1891.

W. L. Douglas Shoe Co.
Brockton, Mass.

Gentlemen: I herewith send application &c. for agency of
21 your shoes at this place, with order for 3 doz. prs. which I trust will receive your kind attention, & obg.

Yours very truly,

T. B. Brown

the purpose being to obtain from the said W. L. Douglas Shoe Company, pursuant to said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said W. L. Douglas Shoe Company of their property as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said T. B. Brown, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said J. D. Pinkerton did on or about the fourth day of January,

eighteen hundred and ninety-two, wrongfully and unlawfully deposit, and cause to be deposited in the said United States post office at Olivia, Conecuh county, Alabama, in a sealed envelope, a letter addressed to W. F. Main Company, Iowa City, Iowa, which said letter was substantially in words and figures as follow, to wit:

Office of

J. Pinkerton & Co.

Dealer in

General Merchandise, Dry Goods, Groceries, Notions, Hardware, Tinware, Boots, Shoes, Hats, Etc.

OLIVIA, Ala., Jan 4th 1892.

W. F. Main Co.
Iowa City, Iowa

Gents Please forward your $69.99 assortment of Jewelry together with your beautiful walnut frame show case Please ship on terms as stated in your circular to Garland Ala.

We would be pleased to have you send with the show case, an assorted lot of Clocks & Watches

Your immediate attention will much oblige

Yours Truly

J. Pinkerton & Co.

22 (the J. Pinkerton mentioned in said letter as J. Pinkerton & Co. is the J. D. Pinkerton, one of the conspirators as aforesaid.)

the purpose being to obtain from the said W. F. Main Company, pursuant to said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said W. F. Main Company of their property and goods as aforesaid by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said J. D. Pinkerton, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said J. D. Pinkerton did, on or about the seventh day of January, eighteen hundred and ninety-two, wrongfully and unlawfully deposit, and cause to be deposited, in said United States post office at Olivia, Conecuh county, Alabama, in a sealed envelope, a letter addressed to Dexter Shoe Company, Boston, Massachusetts, which said letter was substantially in words and figures as follow, to wit:

Office of

J. Pinkerton & Co.,

Dealer in

General Merchandise, Dry Goods, Groceries, Notions, Hardware,

Tinware, Boots, Shoes, Hats, Etc.

OLIVIA, Ala. Jan 7th 1892

Dexter Shoe Co, 122
Summer Street
Boston Mass

Gentleman please send us youre samples of shoes 117896, to Garland Ala

Truly yours

J. Pinkerton & Co.

23 (the J. Pinkerton, mentioned in said letter as J. Pinkerton & Co., is the J. D. Pinkerton, one of the conspirators as aforesaid.)

the purpose being to obtain from the said Dexter Shoe Company, pursuant to said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said Dexter Shoe Company of their property and goods as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said J. D. Pinkerton, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy the said J. D. Pinkerton did, on or about the nineteenth day of November, eighteen hundred and ninety-one, wrongfully and unlawfully deposit, and cause to be deposited in the said United States post office at Olivia, Conecuh county, Alabama, in a sealed envelope, a letter addressed to W. F. Main Company, Iowa City, Iowa, which said letter was substantially in words and figures as follow, to wit:

OLIVIA, Ala. Nov. 19th 1891.

W. F. Main Co.
Iowa City, Iowa.

Gents:—

Please ship me your $69.99 Assortment of Jewelry together with your Show Case which you send free.

My freight and Express office is Greenville Ala.

My P. O. is Olivia Ala.

Yours &c

J. D. Pinkerton.

the purpose being to obtain from the said W. F. Main Company pursuant to said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said W. F. Main Company

of their property and goods as aforesaid, by not paying, and
24 intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said J. D. Pinkerton, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said William T. Pitts did, on or about the seventh day of January, eighteen hundred and ninety-two, wrongfully and unlawfully deposit, and cause to be deposited in the said United States post office at Olivia, Conecuh county, Alabama, in a sealed envelope, a letter addressed to James McPhillips, Mobile, Alabama, which said letter was substantially in words and figures as follow, to wit:

Office of

Wm. T. PITTS

Dealer in

GENERAL MERCHANDISE.

OLIVIA, Ala. Jan. 7 1892.

Mr. Jas. McPhillips
Mobile, Ala.

Dear Sir:—

Enclosed find check fr– $15.00 for 4¾ Gal whiskey at $3.00 Keg .75– Express to Garland, Ala.

Send me a good article I want it for my own use.

Yours very truly

Wm. T. Pitts

the purpose being to obtain from the said James McPhillips, pursuant to said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said James McPhillips of his property and goods as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said William T. Pitts, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said William T. Pitts did, on or about the seventh day of
25 January, eighteen hundred and ninety-two, wrongfully and unlawfully deposit, and cause to be deposited, in the said United States post office at Olivia, Conecuh county, Alabama, in a sealed envelope, a letter addressed to W. B. Vail, Mobile, Alabama, which said letter was substantially in words and figures as follow, to wit:

Office of

Wm. T. PITTS

Dealer in

GENERAL MERCHANDISE.

OLIVIA, ALA. Jan 7 1892.

Mr W. B. Vail
Mobile–Ala.

Dear Sir:— I herewith enclose you check for $14.45 for which please ship tomorrows Exp. to Georgiana, Ala

To S. W. Ward	4¾	Gal	at	$2	Keg	75	10.25
" J. O. Wright	2	"	"	"	Jug	20	4.20
					Total		$14.45

Yours truly

Wm. T. Pitts

the purpose being to obtain from the said W. B. Vail, pursuant to said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said W. B. Vail of his property and goods as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said William T. Pitts, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said William T. Pitts did, on or about the seventh day of January, eighteen hundred and ninety-two, wrongfully and unlawfully deposit, and cause to be deposited in the said United States
26 post office at Olivia, Conecuh county, Alabama, in a sealed envelope, a letter addressed to W. F. Vandiver & Company, Montgomery, Alabama, which said letter was substantially in words and figures, as follow, to wit:

Office of

Wm. T. PITTS,

Dealer in

GENERAL MERCHANDISE.

OLIVIA, Ala. Jan 7 1892

W. F. Vandiver & Co.
Montgomery, Ala.

Gentlemen: Enclosed find check for $15.00 for 4¾ Gal whiskey at $3.00 Keg 75
Exp to Georgiana Ala. pr tomorrow ex if possible.

Yours truly

Wm. T. Pitts

the purpose being to obtain from the said W. F. Vandiver & Company, pursuant to said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said W. F. Vandiver & Company of their property and goods as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said William T. Pitts, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said William T. Pitts did, on or about the third day of September, eighteen hundred and ninety-one, wrongfully and unlawfully deposit, and cause to be deposited, in a certain post office of the United States, to wit: the post office at Mixon, Conecuh county, Alabama, in the said southern district of Alabama, in a sealed envelope, a letter addressed to W. L. Douglas Shoe Company, Brockton, Massachusetts, which said letter was substantially in words and figures as follow, to wit:

27 Office of
Wm. T. Pitts
Dealer in
Dry Goods and Groceries.

MIXON, Ala. 3–9– 1891

W. L. Douglas Shoe Co.
Brockton, Mass.

Dear Sirs:—

I enclose order &c. for shoes and trust you will find everything satisfactory.

Please ship as soon as possible.

Yours truly

Wm. T. Pitts.

the purpose being to obtain from the said W. L. Douglas Shoe Company, pursuant to said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said W. L. Douglas Shoe Company of their property and goods as aforesaid, by not paying, and intending then and there not to pay for said property and goods, but to convert the same to the use of him, the said William T. Pitts, and to the use of others of his co-conspirators as aforesaid.

And still further to effect the object of the said conspiracy, the said D. J. Morgan did, on or about the twenty-third day of February, eighteen hundred and ninety-one, wrongfully and unlawfully deposit, and cause to be deposited, in a certain post office of the United States, to wit: the post office at Olivia, Conecuh county, Alabama, in the said southern district of Alabama, in a sealed envelope, a letter addressed to Mobile Stationary Company, Mobile, Alabama, which said letter was substantially in words and figures, as follow, to wit:

Office of

D. J. MORGAN,

DEALER IN GENERAL MERCHANDISE,

Notions, Novelties, &c.

OLIVIA, Ala. 23 Feb. 1891.

28 Mobile Stationary Co.,
Mobile, Ala.
Dr Sirs,

Please print me 500 Envelopes and send by express to Georgiana, Ala. Will remit in a few days.

Yours truly

D. J. Morgan

the purpose being to obtain from the said Mobile Stationary Company, pursuant to said conspiracy, the merchandise and goods described in said letter, with intent to defraud the said Mobile Stationary Company of their property and goods as aforesaid, by not paying, and intending then and there not to *yay* for said property and goods, but to convert the same to the use of him, the said D. J. Morgan, and to others of his co-conspirators as aforesaid.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

M. D. WICKERSHAM,
U. S. Attorney, Sou. Dist. of Ala.

(Endorsed.)

No. 1037. U. S. district court, southern district of Alabama. May term, 1893. United States *vs.* J. T. Stokes *et als.* Issued under section 5440 as amended by act Congress March 2d, 1889.

A true bill.

S. J. ERVIN,
Foreman Grand Jury.

U. S. district court, southern district of Alabama.
Filed in open court May 6th, 1893.

RICH'D JONES, *Clerk.*

M. D. WICKERSHAM,
U. S. Attorney.

29 MOBILE, *June 30th*, 1893.

We, the jury, find the following-named defendants guilty as charged in the indictment, and assess a fine each of one hundred dollars, viz: J. T. Stokes, A. J. Kendrick, Morgan Mixon, Abraham Kendrick, Samuel H. Mixon, E. H. Cook, D. J. Morgan, B. S. Lane, J. D. Pinkerton.

We, the jury, find the defendant, J. R. Cook, not guilty.

J. H. POPE, *Foreman.*

Defendants' Demurrer to Indictment.

In the United States Court at Mobile, Alabama.

UNITED STATES
vs.
J. T. STOKES *et al.*

Comes the defendants in the above-stated cause and demur to the indictment, and for grounds assign the following, to wit:

First. The indictment is vague, indefinite and uncertain in this that the agreement showing the conspiracy is not set out sufficiently.

Second. In the conspiracy as charged, the giving of checks constituted no part of the agreement, upon which it is alleged that the conspiracy was based.

Third. The agreement as alleged charges that T. R. Jones was to be referred to for the financial standing of defendants, and in the overt act as charged T. M. Jones is referred to without any averment that T. M. Jones and T. R. Jones are one and the same person.

Fourth. In the act as charged against S. H. Mixon the reference to Thomas M. Dean constituted no offence, and this act had no connection with the agreement as charged, of the parties to the conspiracy.

Fifth. In the overt act as charged to have been committed by E. H. Cook, it clearly appears that said act was not done in furtherance of the conspiracy, or to effect the object of the conspiracy.

Sixth. There is no allegation that T. B. Brown was not worth $1,000, and it is only inferentially charged that said Brown was not worth said amount.

Seventh. The individual names of W. L. Douglas Shoe Company, B. C. Young & Co., Dexter Shoe Company, Sage & Co., L. C. Lull & Company, W. F. Main & Company, Haywood Boot and Shoe Company, Schalton Brothers, W. F. Vandiver & Company, Mobile Stationery Company, are not set out in said indictment as required by law.

STALLWORTH & BURNETT,
Att'ys for Defendants.

Filed June 26th, 1893.

RICH'D JONES, *Clerk.*

District Court of the United States for the Southern District of Alabama.

MONDAY MORNING, *June 26th, A. D.* 1893.

Present: Hon. Harry T. Toulmin, judge presiding.

From the minutes, pages 147 and 148.

UNITED STATES *vs.* J. T. STOKES *et al.* } No. 1037. Order Overruling Demurrer. Indictment under Section 5440, R. S.

This cause coming on to be heard upon the defendants' demurrer to the indictment, and the same being fully argued by counsel representing the parties in interest, and the court having duly considered the same—

It is ordered and adjudged that said demurrer be and the same is hereby overruled.

31

UNITED STATES *vs.* J. T. STOKES, A. J. KENDRICK, Morgan Mixon, Abram Kendrick, Sam'l H. Mixon, E. H. Cook, D. J. Morgan, B. S. Lane, J. R. Cook, and J. D. Pinkerton. } No. 1037. Order, Arraignment, Plea, and Jury Indictment under Sec. 5440, R. S.

This day comes the United States by its attorney M. D. Wickersham, Esqr., and also come the defendants in their own proper person and by their attorney John D. Burnett, Esqr., and being arraigned, each for himself pleads not guilty.

Thereupon to try the issue joined comes a jury of good and lawful men to wit: J. H. Pope and eleven others, who being duly elected, tried and sworn, the trial of said cause was proceeded with.

FRIDAY MORNING, *June 30th, A. D.* 1893.

From the minutes, page 150.

Present: Hon. Harry T. Toulmin, judge presiding.

UNITED STATES *vs.* J. T. STOKES *et al.* } No. 1037. Verdict of the Jury. Indictment under Section 5440, R. S.

And now comes the jury, and upon their oaths, do say:

"We, the jury, find the following-named defendants guilty as charged in the indictment and assess a fine each of one hundred dollars, viz: J. T. Stokes, A. J. Kendrick, Morgan Mixon, Abram Kendrick, Sam'l H. Mixon, E. H. Cook, D. J. Morgan, B. S. Lane and J. D. Pinkerton.

We, the jury, find the defendant, J. R. Cook, not guilty.

(Signed) J. H. POPE, *Foreman.*"

It is ordered by the court that the said defendants found guilty be committed to jail to await the sentence of the court on a subsequent day of the term, and that J. R. Cook be, and he is hereby discharged.

32 *Motion in Arrest of Judgment.*

UNITED STATES *vs.* J. T. STOKES *et al.* } No. 1037. Indictment under Section 5440, R. S. Charge: Conspiracy.

Now come the defendants in the above-stated cause, and moves the court to arrest the judgment in said cause on the following grounds:

First. The agreement to do the unlawful act as charged in the indictment is insufficiently averred.

Second. There is no agreement between the defendants, or any two of the defendants, alleged in said indictment charging that the defendants had agreed to do any unlawful act made a crime against the laws of the United States.

Third. There is no offense charged against the laws of the United States in said indictment.

JOHN D. BURNETT,
Att'y for Defendants.

June 30th, 1893.

To M. D. Wickersham, Esq., U. S. attorney.

Filed July 1st, 1892.

RICH'D JONES, *Clerk.*

SATURDAY MORNING, *July 1st, A. D.* 1893.

From the minutes, pages 155 and 156.

Present: Hon. Harry T. Toulmin, judge presiding.

UNITED STATES *vs.* J. T. STOKES *et al.* } No. 1037. Order Denying Motion in Arrest of Judgment. Indictment under Section 5440, R. S.

This cause coming on to be heard upon the defendants' motion in arrest of judgment, and the same being argued by counsel *pro* and *con.*, and the court having duly considered the same—

33 It is ordered that said motion be and the same is hereby denied.

WEDNESDAY MORNING, *July 12th, A. D.* 1893.

From the minutes, page 161.

Present: Hon. Harry T. Toulmin, judge presiding.

UNITED STATES *vs.* J. T. STOKES, A. J. KENDRICK, ABRAM Kendrick, E. H. Cook, Sam'l H. Mixon, Morgan Mixon, D. J. Morgan, J. D. Pinkerton, and B. S. Lane.	No. 1037. Order of Sentences. Indictment under Section 5440, R. S.

It is now ordered by the court that each of the defendants, to wit, J. T. Stokes, A. J. Kendrick, Abram Kendrick, E. H. Cook, Sam'l H. Mixon, Morgan Mixon, D. J. Morgan, J. D. Pinkerton, and B. S. Lane pay a fine of one hundred dollars ($100), together with the costs of the prosecution, and that Morgan Mixon and Abram Kendrick be imprisoned in the county jail of Conecuh county, Alabama, for the period of six (6) months; and that E. H. Cook and Sam'l H. Mixon be imprisoned in said county jail of Conecuh county for the period of eight (8) months; and that A. J. Kendrick and B. S. Lane be imprisoned in the State penitentiary at Anamosa, Iowa, for the period of fifteen (15) months; and that J. T. Stokes, D. J. Morgan and J. D. Pinkerton be imprisoned in said penitentiary at Anamosa, Iowa, for the period of twelve (12) months.

Defendants' Bill of Exceptions.

United States District Court for the Southern District of Alabama.

UNITED STATES *vs.* J. T. STOKES *et al.*	Indictment. Charged with Conspiracy.

Be it remembered that at the May term, 1893, of the above-named court the above-entitled cause came on to be heard, when the following proceedings were had: The indictment in said cause is in words and figures as shown in pages 1 to 29 of this Record, and to
34 said indictment the said J. T. Stokes *et al.* filed the following demurrer as shown on page 29 of this Record.

The court overruled said demurrer, and the said J. T. Stokes *et al.*, the defendants, then and there duly and legally excepted to the overruling of their said demurrer. The indictment was then read to the jury and the defendants pleaded not guilty.

The United States then called one W. C. Karns, who testified that during the years of 1891 and 1892 that he was engaged in the United States postal service as a post-office inspector, and that complaints came to him about fraudulent letters being mailed at the post office at Olivia, Ala., and he was instructed by the Post Office Department to investigate the same; and that Olivia is a post office

in the country, about eighteen miles from the Louisville and Nashville railroad, at Garland, Ala., the nearest station to Olivia, Ala. The mail from Olivia had to come to Garland and to points beyond Garland be transported on the cars to places where the letters were directed. In accordance with his instructions, on the 7th day of January, 1892, he went on the postal car at Garland, Ala., and made an examination of the mails, and in the mail on said car he found a letter, or an envelope, addressed to Danzinger Bros., Syracuse, N. Y., with the words written and printed on said envelope, "Return in 10 days to J. T. Stokes, dealer in general merchandise, Olivia, Ala.," and also an envelope addressed to Dexter Shoe Co., Brocton, Mass., 122 Summers street, with the words printed on the same, "If not called for in 10 days return to J. Pinkerton & Co., dealers in general merchandise, Olivia, Ala.;" also, an envelope addressed Schaltman Bros., New York, with words printed on the same, "If not delivered in 10 days return to A. J. Kendrick, dealer in general merchandise, Olivia, Ala.;" also an envelope addressed S. Caskel, Esq., New York, with words printed on the same, "Return in 10 days to A. J. Kendrick, dealer in general merchandise, Olivia, Ala.;" also, an envelope addressed H. H. Grays Sons, Syracuse, N. Y., with words printed on same, "Return to A. J. Kendrick, Olivia, Ala., if not delivered in ten days;" also, an envelope addressed G. E. Zeltmacher & Co., 54 and 56 Duane street, New York, with the words printed on the same, "Return to A. J. Kendrick, Olivia, Ala., if not delivered in ten days;" also, an envelope addressed Heavenrick, Tronstine & Co., 687 and 689 Broadway, New York, with the words printed on the same, "Return in 10 days to A. J. Kendrick, dealer in general merchandise, Olivia, Ala.;" also, an envelope addressed Mr. Max Ernest, 626 Broadway, New York, with the words printed on the same, "Return in 10 days to A. J. Kendrick, dealer in general merchandise, Olivia, Ala.;" also, an envelope addressed A. & J. Levy, clothing, 625 Broadway, New York, with the words printed on the same, "Return in 10 days to A. J. Kendrick, dealer in general merchandise, Olivia, Ala.;" also, an envelope addressed J. Y. Gallager, New York, 556 Broadway, with the words printed on the same, "Return in 10 days to A. J. Kendrick, dealer in general merchandise, Olivia, Ala.;" also, an envelope addressed Lusting Bros., 59 Bleeker street, New York, with the words printed on the same, "Return to A. J. Kendrick, Olivia, Ala., if not delivered in 10 days;" that all of the said envelopes contained something, and had on them postage stamps, and each of the same had on the post-office stamp as follows, to wit: Olivia, Jan. 7, 1892, Ala. Witness did not know the contents of any of the envelopes, but that he put his private mark on all of them, and allowed them to go on in the mail to the parties to whom they were addressed, with the request that the same, with their contents, be returned to him, and that soon afterwards he received the same through the mails; and the Government also showed by the evidence of the parties to whom said envelopes were addressed, that they were received by them from the post offices at the places where

they were addressed, with the contents. The Government
36 then, by the district attorney, offered to introduce in evidence each of said envelopes, with the printing, writing and endorsements thereon separately, and the defendants objected separately to the introduction of each of said envelopes, and for grounds of objection thereto assign the following to each separately:

First. That the same is not shown to be the act or handwriting of the defendants, or either of them.

Second. That each of said envelopes, with the writing, printing and endorsements thereon, is incompetent.

The court separately overruled each objection and allowed each envelope, with the writing, printing and endorsement thereon, to be introduced in evidence, and to this action of the court the defendants, the said J. T. Stokes *et al.*, then and there duly and legally excepted separately to the action of the court in allowing each envelope, with the writing, printing and endorsement thereon, to be introduced in evidence.

One T. B. Brown was then called as a witness for the United States, and testified, among other things, that E. H. Cook ordered a box of shoes for him from W. L. Douglas & Co., Brockton, Mass., and stated to the witness at the time he made the order, "Let's beat them," and soon after said order was made E. H. Cook informed witness that the goods had come and were in the warehouse at Greenville, Ala., and soon after this he got a message from Cook that the shoes were in Cook's store at Garland, Ala. Witness never gave E. H. Cook any order; there was other evidence that witness did give Cook an order on the freight agent at Greenville, Ala., and that the following was the order, to wit:

OLIVIA ALA, 12—6—91

FREIGHT AGENT,
GREENVILLE, ALA,

Dear Sir

Please Deliver my Freight to Mr. Kirkpatrick, and oblige
T. B. Brouen

37 The United States, by the district attorney, then offered to introduce in evidence said order with the following papers attached thereto, which were shown to be genuine, to wit: A receipt to the Louisville & Nashville Railroad Co. for a box of merchandise in the name of T. B. Brown signed by E. H. Cook, Garland, Ala.; a bill of lading from the Piedmont air line showing that W. L. Douglas had shipped a case of merchandise to T. B. Brown, Greenville, Ala.; a local freight way bill, Montgomery, Ala., to Greenville, Ala., one case merchandise consigned to T. B. Brown; a local freight way bill, Greenville, Ala., to Garland, Ala., one box merchandise consigned to E. H. Cook & Co. The defendants objected to the introduction of the said order and the said papers thereto attached on the grounds,

First. The order and papers are irrelevant and incompetent.

Second. The way bills and bill of lading were made by the rail-

road company, and do not, in any way, show or tend to show that defendants are guilty as charged in the indictment.

The court overruled the objection, and allowed said papers to be introduced in evidence and the defendants then and there duly and legally excepted.

The Government then by the district attorney offered in evidence certain of the letters hereinbefore mentioned signed by A. J. Kendrick, which were admitted by the said A. J. Kendrick, one of the defendants, to have been written by him and signed by him; and the Government then by the district attorney showed the said A. J. Kendrick while on the stand as a witness in his own behalf, the following credit statement purporting to have been written by him and proven to have been received through the post office by one of the parties to whom one of said Kendrick's said letters was addressed and taken from the post office, to wit:

38 *Credit Statement.*

Statement made this 17th day of Jan'y, 1891, to the W. L. Douglas Shoe Company, of Brockton, Mass., by A. J. Kendrick one of the firm of A. J. Kendrick of Olivia, county of Conecuh, State of Alabama, which firm is composed of the following persons (give first names in full): A. J. Kendrick.

For the purpose of satisfying the W. L. Douglas Shoe Company as to my (or) our ability to pay, and with a view of opening and establishing a line of credit with them and purchasing goods of them, I (or) we make the following statement, which is in every respect true:

Assets.

Cash value of stock in store and in transit..	$2,000	00
Amount of book accounts and notes on hand considered good.....	500	00
Amount of book accounts and notes deposited as collateral.....	1,500	00
Cash on hand and in bank...	800	00
Other assets, not real estate.....		
Of what consisting.....		
Value of store building and lot and other real estate not exempt as homestead.....	1,000	00
Description of same and value of each parcel.		
If mortgaged, to what amount.....		
Net value of real estate.....		
Total assets.....	$5,800	00

Liabilities.

For merchandise received or in transit on open account and not due	$300 00	
For merchandise on open account past due.		
For merchandise closed by note not due	130 00	
For merchandise closed by note past due		
For borrowed money, to whom, and address, and when payable, B. S. Lane, Olivia, Ala., payable 1st Sep., 1891	500 00	
Total liabilities		930 00
Surplus assets		$4,870 00

What security given for merchandise.....
To whom and when payable.....
What security given for borrowed money. Note.
Insurance on stock $.. In what companies and amount in each..
Insurance on store building $..... In what companies and amount in each.....
If loss made payable to any one, state to whom and security for what.....
What age. 30. Married or single. Single. How long in business at present location. 6 mos.
If in business in prior locations state where and when.....
Are you liable as endorser or guarantor? If so, to what extent..
How much annual sales, $... How much annual expenses, $...
Give value and description of homestead.....
If mortgaged, to what amount.....
Any judgments or chattel mortgages on file against you. If so, give particulars.....
Of whom do you buy your goods? Have no particular house as yet from whom I buy.
.....
.....
.....
Do you keep a bank account; if so, where and with whom.....

The above covers all my (or) our liabilities and may be considered a continuing statement of my (or) our affairs until I (or) we advise the W. L. Douglas Shoe Company to the contrary, in writing, and may be considered by them a new and original statement of my (or) our affairs upon each and every purchase of goods hereafter.

Sign here full name of firm, A. J. KENDRICK.
By whom signed, A. J. KENDRICK.

Signature witnessed by B. S. Lane, of Olivia, Ala.

39 and asked the said A. J. Kendrick if he wrote the same or had it written, to which the said A. J. Kendrick answered that he did not write it or have it written. The United States then, by the

district attorney, offered to introduce in evidence said credit statement, and the defendants objected to the same on the grounds as follows, to wit:

First. There is no evidence that A. J. Kendrick wrote or had written said credit statement.

Second. Said credit statement is not shown to be in the handwriting of the defendant A. J. Kendrick.

Third. Said credit statement is irrelevant and incompetent as evidence.

The court overruled said objection and allowed said credit statement to be introduced in evidence, and to this ruling of the court the defendants, the said J. T. Stokes *et al.*, then and there duly and legally excepted.

This was all the evidence that was offered during the trial to which any objection and exceptions were taken by the said J. T. Stokes *et al.*

The United States district attorney in his argument to the jury stated, among other things, to the jury as follows, to wit: "To take the letters offered in evidence signed A. J. Kendrick and the credit statement signed A. J. Kendrick when they retired to make up their verdict, and compare the two, and say whether one and the same man wrote both papers." The defendants, the said J. T. Stokes *et al.*, then and there objected to this argument of the district attorney, and the court overruled said objection and stated that the argument was legitimate, and to this ruling of the court the said J. T. Stokes *et al.* then and there duly and legally excepted.

And now come the defendants, the said J. T. Stokes *et al.*, and tender this their bill of exceptions in said cause in term time, which is signed and sealed by the Hon. Harry T. Toulmin, the judge presiding in the trial of the above-named cause, this the thirteenth day of July, A. D. 1893.

HARRY T. TOULMIN, *Judge.*

JNO. D. BURNETT, Esq.,
Defendants' Attorney.

Filed July 13th, 1893.

RICH'D JONES, *Clerk.*

40 United States District Court for the Southern District of Alabama.

UNITED STATES
vs.
J. T. STOKES *et al.* } No. 1037.

Assignment of Errors.

In the matter of the conviction and sentence of J. T. Stokes *et al.* of the charge of conspiracy.

Comes J. T. Stokes, A. J. Kendrick, Morgan Mixon, Abraham Kendrick, Samuel H. Mixon, E. H. Cook, D. J. Morgan, B. S. Lane

and J. D. Pinkerton, on behalf of themselves, and say that there are manifest errors in the judgment of the said court in the above-named cause, and as error, assign the following:

First. The court erred in overruling the demurrer to the indictment.

Second. The court erred in allowing the witness, W. C. Karns, to testify; that he, as the agent of the United States, engaged in the postal service on the postal car on the L. & N. R. R., near Garland, Ala., in January, 1892, examined and found in the mail on the car the envelopes and printing and endorsements thereon, addressed to, Danzingar Bros., Syracuse, N. Y.; Dexter Shoe Co., 122 Sommers street, Boston, Mass.; W. L. Douglas Shoe Co., Brockton, Mass.; Schaltman Bros., New York; S. Caskel, Esq., New York; H. H. Grays Sons, Syracuse, N. Y.; G. E. Zeltmacher & Co., 54 and 56 Duane street, New York; Heavenrick, Tronstine & Co., 687 and 689 Broadway, New York; Mr. Max Ernest, 626 Broadway, New York; A. & J. Levy, clothing, 625 Broadway, New York; J. Y. Gallager, 556 Broadway, New York; Lusting Bros., 59 Bleeker street, New York, and allowing said envelopes, with the endorsements and writing thereon, to go to the jury as evidence.

Third. The court erred in allowing the order of T. B. Brown, dated 12, 1, '91, to freight agent, Greenville, Ala., to deliver freight to Mr. Kirkpatrick, and the paper thereto attached, to be introduced in evidence to the jury.

Fourth. The court erred in allowing the credit statement, dated January 17th, 1891, and signed A. J. Kendrick, to go to the jury as evidence.

Fifth. The court erred in allowing the United States district attorney to state in his argument to the jury "to take the letters offered in evidence, signed A. J. Kendrick, and the credit statement, signed A. J. Kendrick, when they retired to make up their verdict, and compare the two, and say whether one and the same man wrote both papers."

41 Sixth. The court erred in overruling the motion in arrest of judgment.

Seventh. The court erred in its final judgment made July 12th, 1893.

Eighth. And the said J. D. Stokes *et al.* respectfully prays the honorable Supreme Court of the United States to correct such manifest errors as have intervened to their prejudice and to reverse said cause.

JNO. D. BURNETT,
Attorney for Appellants.

Filed May 28th, 1894.

RICH'D JONES, *Clerk.*

Petition for Writ of Error.

In the United States District Court for the Southern District of Alabama.

UNITED STATES
vs.
J. T. STOKES *et al.* } No. 1037. Charge: Conspiracy.

To the honorable the judge of the United States district court for the southern district of Alabama and to the Honorable Harry T. Toulmin, judge of said court:

Your petitioners, J. T. Stokes, A. J. Kendrick, Morgan Mixon, Abraham Kendrick, Samuel H. Mixon, E. H. Cook, D. J. Morgan, B. S. Lane and J. D .Pinkerton, respectfully show unto your honor the above-entitled cause came on to be heard on the 26th day of June, 1893, in the above-named court, and your petitioners filed a demurrer on said day to the indictment in said cause, and on the same day the Hon. Harry T. Toulmin, judge, presiding in said court, overruled said demurrer, and said cause was then tried, and during the trial of the same your petitioners made several objections to questions asked by the United States district attorney to the witness being examined against petitioners, which objections were overruled by the court, and petitioners then and there reversed exceptions to the ruling of said court; and your petitioners further showeth that during the trial of said cause petitioners reserved several exceptions to the ruling of said court in allowing
42 certain papers and verbal testimony to go to the jury as evidence.

And your petitioners further showeth unto your honor that during the argument of said cause to the jury on the 30th day of June, 1893, the district attorney was allowed by the court, against the objection of petitioners, to ask the jury to take the letters offered in evidence, signed A. J. Kendrick, and the credit statement, signed A. J. Kendrick, dated Jan. 17th, 1891, when they retired to make up their verdict and compare the two and say whether one and the same man wrote both papers. Your petittioners further showeth that on the 30th day of June, 1893, the jury returned a verdict of guilty and assessed a find of one hundred dollars each against petitioners, and on the same day petitioners made a motion in arrest of judgment in said cause, which motion, on the 1st day of July, 1893, the Hon. Harry T. Toulmin, judge presiding in said cause, overruled, and on the 12th day of July, 1893, pronounced sentence upon petitioners, and petitioners show*eth* that there has been manifest injury done petitioners in the trial and sentence in said cause.

Wherefore petitioners pray your honor to be allowed a writ of error to the Supreme Court of the United States from, and supersede, the said judgment made and rendered by the said honorable United States district court for the southern district of Alabama on

said 12th day of July, 1893, sentencing petitioners as af-resaid, and that a writ of error be allowed, and that a transcript of the record and proceedings and papers upon which said judgment was had, duly authenticated, may be sent to the said Supreme Court of the United States, that said court may correct such error as has intervened to the prejudice of petitioners, and that your honor will make
43 all necessary orders in the premises and cause citation to issue in due form as required by law.

JNO. D. BURNETT,
Attorney for Above-named Petitioners.

Filed May 28th, 1894.

RICH'D JONES, *Clerk.*

Order Granting Writ of Error, etc.

MONDAY MORNING, *May the 28th, A. D.* 1894.

Present: Hon. Harry T. Toulmin, judge, presiding.

Minutes, page 320.

UNITED STATES *vs.* J. T. STOKES, A. J. KENDRICK, ABRAHAM Kendrick, E. H. Cook, Sam'l H. Mixon, Morgan Mixon, D. J. Morgan, B. S. Lane, & J. D. Pinkerton.	No. 1037. Indictment under Sec. 5440, Rev. Stat. U. S.

It appearing to the court that an assignment of errors having been filed as required by law and the rules of court in the above-entitled cause and a writ of error to the Supreme Court of the United States having been prayed for, it is ordered that the same be, and is hereby, granted and allowed; and further ordered that the execution of the sentences herein be suspended pending such appeal, which also suspends the execution of the payment of the fines imposed. The defendants are allowed bond in the sum of three hundred — ($300.00) each, with good security, to be approved by a U. S. circuit court commissioner under rule No. 36 of the U. S. Supreme Court rules. The fines against E. H. Cook and Sam'l H. Mixon having been paid to the clerk, he is hereby directed to hold the same subject to the further order of the court pending said appeal.

HARRY T. TOULMIN,
U. S. Judge.

44 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the southern district of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you,

between the United States, plaintiff, and J. T. Stokes, A. J. Kendrick, Morgan Mixon, Abraham Kendrick, Samuel H. Mixon, E. H. Cook, D. J. Morgan, B. S. Lane, and J. D. Pinkerton, defendants, a manifest error hath happened, to the great damage of the said defendants J. T. Stokes, A. J. Kendrick, Morgan Mixon, Abraham Kendrick, Samuel H. Mixon, E. H. Cook, D. J. Morgan, B. S. Lane, and J. D. Pinkerton, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., within thirty days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 8th day of June, in the year our Lord one thousand eight hundred and ninety-four.

Seal United States Circuit Court, Southern Dist. of Ala.

RICH'D JONES,
Clerk U. S. Circuit Court, Sou. Dist. Alabama.

Allowed by—
HARRY T. TOULMIN,
U. S. District Judge.

[Endorsed:] No. 1037. U. S. district court, sou. dist. Alabama. United States, plaintiff, *vs.* J. T. Stokes *et al.* Writ of error. Filed June 8th, 1894. Rich'd Jones, clerk. Jno. D. Burnett, attorney for plaintiffs in error.

45 Original.

Citation in Error.

THE UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at Washington, District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the southern district of Alabama, wherein J. T. Stokes, A. J. Kendrick, Morgan Mixon, Abraham Kendrick, Samuel H. Mixon, E. H. Cook, D. J. Morgan, B. S. Lane, and J. D. Pinkerton are plaintiffs in error and the United States of America are defendants in error, to show cause, if any there be, why the judgment

in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Honorable Harry T. Toulmin, judge of the district court of the United States for the southern district of Alabama, this the eighth day of June, in the year of our Lord one thousand eight hundred and ninety-four.

HARRY T. TOULMIN,
Judge of the United States District Court for the Southern District of Alabama.

Received in office June 8th, 1894. Executed June 8th 1894, by placing a copy of this citation in the hands of J. N. Miller, Esq., U. S. attorney, southern district of Alabama.

E. R. MORRISSETTE,
U. S. Marshal,
By E. H. SHELTON, *Deputy.*

Service, $2.00.
Returned and filed June 8th, 1894.

RICH'D JONES, *Clerk.*

46 *Clerk's Certificate.*

I, Richard Jones, clerk of the district court of the United States for the southern district of Alabama, do hereby certify that the above and foregoing is a full, true, and correct transcript of the record, bill of exceptions, assignments of errors, and all proceedings in the case No. 1037, wherein the United States is plaintiff and J. T. Stokes, A. J. Kendrick, Morgan Mixon, Abraham Kendrick, Samuel H. Mixon, E. H. Cook, D. J. Morgan, B. S. Lane, and J. D. Pinkerton are defendants, except that the original writ of error and citation in error are included therein instead — copies thereof, as fully as the same remains on file and of record in my office.

Seal United States District Court, Southern Dis. of Alabama.

Witness my hand and the seal of the said district court of the United States, at Mobile, this the 12th day of June, A. D. 1894.

RICH'D JONES, *Clerk.*

Endorsed on cover: Case No. 15,630. S. Alabama D. C. U. S. Term No., 746. J. T. Stokes, A. J. Kendrick, Morgan Mixon *et al.*, plaintiffs in error *vs.* The United States. Filed July 9, 1894.